

What has the ABA had to say about all of this? On Thursday, February 26, 2003, the head of the ABA, Alfred P. Carlton, Jr. sent a letter to Senators FRIST and DASCHLE. I was deeply disappointed by its content.

In that letter, the ABA declares that our criticism of Mr. Estrada's case is "unfair." The ABA goes on to say that we seek to:

Impugn the integrity of members of the Committee and of its process during the current Senate debate. . . .

I was also a little disappointed that Mr. Carlton failed to tell me about this letter when he met privately with me a day after the letter had been sent. I didn't ask for that meeting. He asked for it.

In that meeting, I strongly encouraged the ABA to strengthen its rules and disavow the process that led to Mr. Estrada's recommendation and possibly scores more of tainted recommendations. Mr. Carlton told me he would consider such a step.

I also encouraged Mr. Carlton to write to Senators FRIST and DASCHLE and tell them that the ABA would clean up its act. Mr. Carlton also told me he would consider sending such a letter.

He not only failed to mention that just the day before he had sent the leaders a letter, but also that the letter was a strongly worded defense of an indefensible process.

If the head of the ABA cannot be straight with me, what hope do we have for this process? The letter he sent the leaders reveals that we shouldn't have much hope.

The ABA says in the letter that we have been critical of Mr. Fielding's role based solely on the fact that he co-founded the Committee for Justice. The ABA letter implies that this fact is not problematic because the Committee for Justice was formed after Mr. Fielding made his glowing recommendation of Mr. Estrada. The letter fails to mention several things: First, that even this post-Estrada activity violates ABA's clear rules. Second, that Mr. Fielding was engaged in the Bush transition partisan activities at the time he was making his Estrada recommendation. The letter concludes that our attacks on this process are "baseless". . . .

If this is so, then the ABA's own rules are baseless. The ABA cannot claim that our criticism of the way Mr. Estrada's recommendations was handled is baseless when that recommendation violates the ABA's own rules. Is the ABA disavowing its own rules? Does it find them baseless?

Conflict of interest rules such as the ones that ABA has adopted are not just designed to prevent the actual exercise of a bias in a way that influences an outcome. These rules are also adopted to prevent the appearance of a conflict. Preventing the appearance of impropriety is important to assure the Senate and the American people that the process of evaluating our judges is as impartial as people expect judges to be.

Before we rely upon the judgment of the ABA in evaluating nominees for lifetime judicial appointments, the ABA should not just pledge to enforce existing rules but should strengthen those rules. They should revise them to provide that individuals so heavily steeped in partisan activities not be permitted to serve in these crucial roles at all. That is, the rules should be expanded to prevent partisans from passing judgment on judicial nominees. This shouldn't be limited merely to the time period during which the individual is serving on the ABA Committee.

It strains credulity to believe that someone who occupied partisan roles in the last several Republican administrations could be viewed as impartial in this case. If Mr. Fielding had started the committee for Justice after he left the committee would the specter of bias really be any less? Mr. Fielding moved seamlessly from passing judgment on Mr. Estrada to becoming a leading advocate for his nomination.

The fact that the advocacy followed the judgment doesn't render the judgment any less suspect. Much has also been made of the fact that the full ABA Committee endorsed Mr. Fielding's view of Mr. Estrada's qualifications. This doesn't cleanse the Fielding recommendation of its taint. Mr. Fielding is an important person, a powerful man.

Mr. President, the hour of 12:30 is nearly here. I guess he left—I saw my friend from Kansas here. I just have a couple of more minutes and it will run past 12:30. I ask unanimous consent I be allowed to finish my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. It is impossible for us to know one way or another whether members of the committee felt pressure to endorse Mr. Fielding's view. It is certainly possible. And that possibility—like Mr. Fielding's clear conflict of interest—is the problem in this case.

There are thousands of lawyers in the United States, thousands who are not steeped in partisan politics—Democrat or Republican. That is every obvious because the poorest contributors to campaigns of any group in America are lawyers. So most of them are not involved at all in politics.

We rightly cast a skeptical eye on judicial nominees who are heavily involved in partisan activities. We do that because we want those who would define the breadth and depth of our constitutional protections to be impartial and without bias.

Regardless of what side of the aisle you are on—Democrats or Republican—we should be able to agree that those who occupy the most partisan roles of either party should not be part of the ABA process.

This does not, in the words of the ABA, impugn those partisans. It is to say that the fact of those partisan activities creates a clear appearance of

impropriety. It is that appearance that is impossible to avoid. It is that appearance—and the doubt that it creates in the underlying process—that is the heart of all conflict of interest rules.

This issue goes well beyond the nomination of Miguel Estrada. His nomination has simply brought to light a fatally flawed process that should not be relied upon in the case of any of our nominees.

As I have said before, I now agree with the majority that the ABA should be out of the process. I hope that the ABA will rethink the staunch defense it made of its flawed process and flawed recommendations. I hope that the head of the ABA will not continue to be disingenuous when he meets with Members privately. Perhaps then the ABA would merit the trusted role that it has long held by that, in my view, it no longer deserves.

RECESS

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I rise to speak on a few matters of importance to us related to the nomination of Miguel Estrada, which is what we are now focused on, as well as some of the issues we should be focused on which we are not doing because the majority leader has determined we will continue to debate Estrada.

Last week, something happened in the Judiciary Committee that more of our colleagues should know about because a lot of us find this very confounding.

First, I have tremendous respect for and, indeed, consider the senior Senator from Utah my friend. I know he cares deeply about the issues and about the Senate. What we are seeing in the Judiciary Committee is going to do some significant harm—I hope not irreparable harm—not only to the Judiciary Committee but to the whole body. Up until last week, when we were moving closer and closer and closer to the edge of violating the rules the Judiciary Committee has worked upon, there were a lot of traditions on our committee. It is an important committee, a committee steeped in great legal tradition. If you look at the pictures on the wall of the various chairs of the committee, it goes long and deep.